

NO. 17-4446

In The
United States Court of Appeals
For the Fourth Circuit

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VELARIAN SYLVESTER CARTER,
Also known as "L"

Defendant.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA AT CHARLESTON
(Case No.: 2:16-cr-00121)**

**MOTION OF COUNSEL TO WITHDRAW AS
CO-COUNSEL FROM REPRESENTATION**

Pursuant to Local Rule 46(c) of the Federal Rules of Appellate Procedure, co-counsel for the Defendant Velarian Carter, Dwight J. Staples, Esq., moves this Honorable Court for leave to withdraw as co-counsel for the reasons set forth below:

On February 6, 2017, the Defendant, Velarian Carter was sentenced in open court to 240 months and 8 years of supervised release. Subsequently, it was agreed

that defense counsel would file an appeal on his behalf. A Judgment Order and Statement of Reasons were not initially filed, therefore, defense counsel proceeded to file a Notice of Intent to Appeal, then ordered the sentencing hearing transcript. The Sentencing Hearing Transcript was received by defense counsel on or about June 9, 2017, yet the Judgment Order and Statement of Reasons still had not been entered.

On or about June 27, 2017, the Defendant Velarian Carter was a named defendant in an Indictment, Criminal Number 5:17-00113 along with seventeen (17) other individuals. I have personally represented and/or advised some of the co-defendants listed in the indictment on other matters in state court. Additionally, four (4) of the co-defendants listed in the indictment are related to the undersigned by blood or marriage. Moreover, it is unknown whether there is a nexus between criminal numbers 2:16-00121 and 5:17-00113.

On or about July 5, 2017, the Judgment Order and the sealed Statement of Reasons were entered in this case.

The motion to withdraw is based on a concurrent conflict of interest as set forth in Rule 1.7 (a) of the West Virginia Rules of Professional Conduct, The Model Rules of Professional Conduct published by the American Bar Association and LR Cr P 44.7.

... a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third party or by a personal interest of the lawyer.

Rule 1.7(a), West Virginia Rules of Professional Conduct and the Model Rules of Professional Conduct published by the American Bar Association.

Representation of the Defendant Velarian Carter would create the appearance of impropriety, could give use to impermissible conflicts of interest, and would raise issues with regard to the maintenance of client confidentiality.

Clearly, the subsequent indictment is an unforeseeable development to counsel that creates conflicts of interest due to the prior representations and familial relationships.

For the aforementioned reasons, Dwight J. Staples, Esq. requests leave to withdraw as counsel. The Defendant Velarian Carter has been notified of Dwight J. Staples, Esq. intent to withdraw as co-counsel in this case and has voiced no objection. Good causes exist for Dwight J. Staples, Esq. to withdraw from this case.

Therefore, Dwight J. Staples, Esq., respectfully request that he be permitted to withdraw his appearance as co-counsel on behalf of the Defendant Velarian Carter. Mr. Staples also request removal from the Court's electronic filing system (CM/ECF) for this action.

VELARIAN SYLVESTER CARTER

BY COUNSEL

HENDERSON, HENDERSON & STAPLES, L.C.

BY: *s/Dwight J. Staples, Esq.*

Dwight J. Staples, Esq. (#3566)
Co-Counsel for Defendant
711 Fifth Avenue
Huntington, WV 25701
Telephone: (304) 523-5732
Facsimile: (304) 523-5169